

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

60327

FILE: B-184754

DATE: December 24, 1975

MATTER OF: Design Concepts, Inc.

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DIGEST:

1. Presence of "approach" evaluation criterion, coupled with finding that detailed methods of providing services will necessarily vary from firm to firm because of imprecise character of work statement (notwithstanding statement's detailed outline of work structure), prevents conclusion that agency has defined its needs sufficiently to permit formal advertising.
2. Given propriety of agency's use of negotiated purchase method, no objection is made to relative assessment of offerors' proposals under traditional responsibility factors even if factors have primary weight in evaluation process.
3. GAO cannot disagree with agency's positions that because over 60 firms attended preproposal conference and 20 additional firms requested copies of RFP, adequate competition for procurement will be had and that package of estimated services represents agency's reasonable needs.

On August 18, 1975, a protest was received from Design Concepts, Inc., concerning request for proposals (RFP) No. 3MPE-1082 issued by the General Services Administration on August 6, 1975, for estimated requirements of interior planning services during a 6-month period in the Washington, D.C., area. Among other grounds for protest, Design Concepts questioned GSA's right to negotiate the purchase of the planning services given the statutory preference (41 U.S.C. § 252(c) (1970)) for formal advertising.

The RFP was negotiated under authority of 41 U.S.C. § 252(c)(10) which provides, in effect, that contracts may be negotiated when it is impracticable to secure competition on a formally advertised basis for the required services or supplies. Specifically, the determination to negotiate here was based on GSA's findings that:

"* * * although the general process and certain milestones for accomplishing the Government's objectives [for the services] can be logically described, the detailed method of providing the services will vary between firms because of differences in understanding, approach and team organization.

"[Consequently,] It is impossible to draft adequate specifications [suitable for formal advertising] or an adequate detailed description which would define the services to a degree such that all prospective contractors would derive the same understanding of the Government requirements."

Design Concepts points out, however, that the requirements involved were defined in several pages of the RFP under the following headings: "Scope of Services" (1 page); "Services Defined" (3 pages); "Tasks Required" (11 pages); and "Estimate of Services Required" (1 page). The company concedes that the RFP requests offerors to describe their approaches to the requirements--thereby indicating that GSA was seeking offerors' definitions, to an unstated extent, of the agency's actual reasonable needs for the services. The company argues, however, that inclusion of the "approach" evaluation factor is not significant (especially since the factor is not related to specific project areas involved in the 6 months' estimate) when compared to the other nonapproach evaluation factors ("project understanding," "experience," "facilities," "subcontractors," "workload," "team," and "other resources"). Design Concepts further alleges that GSA is making use of the nonapproach evaluation factors to improperly determine the responsibility of offerors. This, according to Design Concepts, permits the contracting agency to avoid making a determination of nonresponsibility thereby improperly precluding an appeal to the Small Business Administration for a certificate of competency.

Granted that offerors' innovative efforts in providing services are only evaluated under one of the eight evaluation criteria, the presence of this criterion, coupled with the finding that the detailed methods of providing the services will necessarily vary from firm to firm because of the imprecise character of GSA's present work statement (notwithstanding the statement's detailed outline of the work structure), prevents us from concluding that GSA has defined its needs sufficiently to permit formal advertising.

The arguments Design Concepts makes about GSA's alleged wrongful use of responsibility factors ("understanding," "experience," "facilities," "subcontractors," etc.) as proposal evaluation factors have previously been considered. See, for example, 52 Comp. Gen. 854, 857 (1973). In the cited case, in denying a protest against the use of evaluation factors bearing on responsibility, we observed that these factors, in conjunction with evaluation factors bearing on technical approach, are used widely to evaluate offerors' proposals in negotiated purchases. All evaluation factors, whether relating to traditional concepts of responsibility or to technical approach, are used to make relative assessments of the merits of individual proposals. These relative assessments should not be considered responsibility findings which are made after proposal evaluation has been completed. Responsibility findings, unlike the relative assessment approach involved in proposal evaluation, are concerned with whether an offeror has the minimum capacity to do the required work. Given the propriety of an agency's use of the negotiated purchase method in the first place, we cannot object to the relative assessment of offerors' proposals under traditional responsibility factors even if these factors have primary weight in the evaluation process, as here.

Design Concepts also takes issue with what it considers excessive personnel requirements (allegedly 24 individuals) needed to do the work at the highest estimated level of required services (four concurrent jobs of 25,000 square feet each). Design Concepts considers these requirements inherently restrictive of competition insofar as small design firms are concerned.

GSA's apparent position is that the package of estimated services represents a statement of its reasonable needs. It further points out that because over 60 firms attended its pre-proposal conference for the RFP, coupled with the fact that 20 additional firms requested copies of the RFP, competition will be had for the purchase. We can not disagree with those positions. As in the purchases of other supplies or services for the Government, special consideration is not required by law to be given to the needs of small business concerns unless the purchases are set aside for competition among these concerns only. We note GSA's observation, however, that a concern may propose to supplement its staff (by subcontract or other firm agreement) if the demands for a given purchase exceed its present capabilities.

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Protest denied.

R. F. M.
Deputy Comptroller General
of the United States